

Please see the following analysis about today's Supreme Court ACA news, prepared by Sam Ennis.

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All,

Today the Supreme Court granted certiorari in *King v. Burwell*, the decision from the Fourth Circuit Court of Appeals that rejected a conservative attack on the ACA arguing that due to a poorly-worded clause in the ACA, premium tax credits are only available in State-based Marketplaces, and not federally-facilitated Marketplaces. A panel of the D.C. Circuit Court of Appeals had previously agreed with this interpretation and nullified tax credits in the federal Marketplaces, but that panel decision was vacated by the full D.C. Circuit, and briefing is currently pending before the full D.C. Circuit sitting en banc, where it is expected that the court would rule in favor of the government and reject the lawsuit.

Unfortunately, the fact that the Supreme Court granted certiorari without waiting for the D.C. Circuit's en banc panel to issue an opinion (or even hear the case) is a strong indication that the SCOTUS plans on overruling the 4th Circuit and holding that premium tax credits are unavailable in federal Marketplaces. While this would obviously cause the ACA to collapse upon itself and would lead to chaos with regard to those individuals who have already obtained insurance using tax credits, it seems likely that the Court will say "we are going to let Congress fix this error, that's not our job," and throw the ACA back to the new Republican Congress for "revision."

Certiorari was only granted today (here's a link for more information, <http://www.scotusblog.com/2014/11/court-to-rule-on-health-care-subsidies/>), so there's some time to think about the best way to formulate a response, whether through amicus briefing, lobbying, etc. As Elliott noted (he and I are co-panelists at a conference today), insurers are almost certainly going to come out swinging against Section 206, and so we'll need to be particularly focused on protecting the statute as drafted.

We will keep you posted as this develops.

Sam

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